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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/721,139	11/22/2000	Richard Sutton Cherry	08046-1-0020	2267

26135 7590 02/09/2005  
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EXAMINER

ZURITA, JAMES H

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/721,139

Applicant(s)

CHERRY, RICHARD SUTTON

Examiner

James H Zurita

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 20041118.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

The Restriction Requirement of 15 October 2004 is hereby vacated.

### ***Response to Amendment***

The present Office Action is a response to applicant's amendment of 8 June 2004.

Applicant amended claims 17, 28 and 29. Claims 1-31 are pending and will be examined.

### ***Claim Objections***

The claims contain numerous word processing errors. The Examiner has been able to identify some of these. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in other claims.

Applicant is encouraged to review the specifications and claims for other errors.

Since Claim 31 appears to be a cut-and-paste of claims 1-30, applicant is requested to also check claim 31 for similar errors in claims 1-30.

These claims are objected to because of following informalities:

Claims 5, 31 "...fees that may **me** charged..." should be changed to "...fees that may **be** charged..."

Claims 5 and 31 "...buying members..." should be changed to "...buyer members..."

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Claims 8, 9 and 31, "...the candidate geographic areas..." lacks antecedent.

Claims 14, 31 "...prior to they becoming associated..." should be changed to "...prior to **their** becoming associated..."

Claims 17, 31 "...competition between potential **or** existing retailer members" should be changed to "...competition between potential **and** existing retailer members."

Claims 18, 31 read, "...awarded to consumer members who sponsor qualified persons who become **[type of member]?** members of said club." It is not clear what type of member is envisioned.

Claim 21 should be changed to depend from claim **20**.

Claims 26, 31 refer to "...fulfill and purchases [sic] made during its period of designation." It is not clear how the claims should read.

Claims 27, 31 refer to "...a single "active" buyer member to fulfill an order when multiple "active" members have been designated" and should be changed to "...a single "active" buyer member to fulfill an order when multiple "active" **buyer** members have been designated"

The following claims contain terms that are **indefinite** in that they fail to particularly point out and distinctly claim the subject matter which applicant regards as the invention:

- "...automatically..." claims 14, 27, 31.
- "...acceptable..." claims 5, 31.
- "...adequate..." claims 12, 31.
- "...likelihood..." claims 7, 12, 31.
- "...sufficient..." claims 7 and 31.
- "...suitable..." claims 8, 10, 31
- "...pre-determined..." claims 6, 11, 31

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"...qualified [persons]... claims 18 and 31.

**Claims 7-13, 17, 19-21, 26 and 31** contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 7-13 appear to be directed to defining a club area and appear to correlate to pages 7-8 of the specification. The claims appear to merely restate, without further elaboration, text found in the description. For example:

	Claim language	description
7	Claim 7. (original) The method of claim 4 further comprising the step of determining the geographic location of said club member areas based on the likelihood of enrolling a sufficient number of consumer, buyer members based upon demographics and statistics.	Whether or not the population density and demographics within a specified radius of the Center is expected on the basis of statistics to yield a sufficient number of Consumer, Buyer and Retailer Members to support a stable and sufficient volume of Buying Order activity; [page 8, lines 11-26]
8	Claim 8. (original) The method of claim 4 further comprising the step of determining the geographic location of said club member areas based on the availability of suitable wireless networking infrastructure in the candidate geographic areas.	Whether or not the wireless networking infrastructure within a specific radius of the center supports a method of mobile data communications, for the purpose of interacting with Club Buyers deployed within the Member Area; [page 8, lines 11-26]
9	Claim 9. (original) The method of claim 4 further comprising the step of determining the geographic location of said club member areas based on the number and nature of potential retailer members likely to allow <b>competition-based incentives</b> to drive retailer member subscription within candidate geographic areas.	In the present embodiment, once a retailer has become a Retailer Member of the Club, further <b>competition-based incentives</b> are offered to Retailer Members by virtue of providing a platform for advertising, offering of coupons in regard to retailer special offers, and detailed descriptions of products offered for sale, including exact pricing, via local databasing [sic] of their inventory. The Club benefits from providing these services to retailer members through the collection of additional fees. [page 11, lines 1-6]
10	Claim 10. (original) The method of claim 4 further comprising the step of determining the geographic location of said club member areas based on the availability of a suitable site for rental or construction of a warehouse structure centrally located within candidate geographic areas.	Whether or not a geographic location can be discovered that provides a suitable site for rental or construction of a warehouse structure centrally located within the Member Area; which site is referred to as the Center of the Member Area, or Center; [page 8, lines 11-26]
11	Claim 11. (original) The method of claim 4	The use of ZIP codes is an advantage of the

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	further comprising the step of determining the geographic location of said club member areas based on refining its geometric shape to approximate a circle, by the use of extended ZIP codes falling within a pre-determined radius of the center of a candidate geographic area.	preferred embodiment in that ZIP codes represent a convenient method whereby potential Club Members can approximately indicate whether or not they reside or do business within a Member Area. Extended ZIP codes determined from potential Member addresses further help constrain membership to a more geometrically regular Member Area; ideally a circle. [Page 7 line 33-page 8, line 5.]
12	Claim 12. (original) The method of claim 4 further comprising the step of determining the geographic bounds of said club member areas based on adequate transportation infrastructure to improve the likelihood of buyer members having the ability to deliver purchases within approximately thirty (30) minutes to any point within a candidate geographic area.	Whether or not the transportation infrastructure within a specific radius of the center supports the 30-minute Buying Order fulfillment; [page 8, lines 11-26]
13	Claim 13. (original) The method of claim 4 further comprising the step of identifying and inducing potential consumer, buyer and retailer members through <b>active</b> recruitment programs.	Whether or not market data suggest potential Members within the Member Area are likely to respond to active and passive recruitment programs defined by the Club business model.

**Claims 9, 31** in addition to the above, reads, in part,

“...determining the geographic location of said club member areas based on the number and nature of potential retailer members likely to allow competition-based incentives to drive retailer member subscription within candidate geographic areas.”

This language is indefinite in that claim 9 appears to require determining the state of mind of potential retail members, or on the outcome of a predictive algorithm. It is not clear how either is accomplished, since, by definition, a potential retail member has not registered and applicant does not disclose how to obtain information concerning any retailer member's intention or likelihood of doing anything.

The claims refer to “...retailer member **subscription** within candidate geographic areas...” The term **subscription** appears to be used in the sense of becoming a member of a club and will be thus interpreted.

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**Claims 1, 31** refer to "...buyer members who must be prepared..." appear to require an inquiry into a potential state of mind.

**In Claim 13**, please note that applicant mentions active recruitment program and passive recruitment program but does not elucidate the difference.

**Claim 17** refers to "...incentives to retailer members are based on competition between potential or [sic] existing retailer members." Incentives and existing retail members appear to be discussed on page 9, line 25-page 10, line 33. The specifications appear to describe (page 15, line 8 to page 16, line 30) a potential retailer member as one that has not yet registered. The description appears to contain only general remarks directed to purported benefits of membership.

**Claim 19** refers to "...incentives to buyer members are services designed to allow said buyer members to become independent business persons. This language appears to be directed to purported benefits of applicant's invention that are not otherwise described, since it is not clear how applicant accomplishes his stated design "...designed...to allow...to become..." The description fails to elucidate. For example,

A further advantage of the membership *incentives* strategy in the preferred embodiment of the present invention is the incorporation of *incentive* to potential Club Buyers, who are offered a meticulously-developed plan for becoming self-employed **businesspersons**, with a clientele already established by the Club... [Page 11, lines 7-10, emphasis added]

In accordance with the Club business model as part of the preferred embodiment of the present invention, and aside from any additional advertising to revenue negotiated with Retailer Members, or obtained by providing optional services to Retailer Members, these transaction *fees*, together with Club membership *fees*, are the intended to become the overriding source of regular income for the Club. All other amounts associated with a Buying Order, which comprise tariffs assigned to retailers based upon product category, extra item *fees* and gratuities, are outside the domain of the Club. They are collected and retained by the Club

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Buyer, as an *independent businessperson*. [claim 19] Aside from the extra-item fee, which is dictated by the Club in accordance with the Club business model and not negotiable, disposition of the tariff and gratuity are subject to negotiation by the Club Buyer with the retailer and Consumer Member, respectively. According to the Club business model in the present embodiment, however, tariffs and gratuities are constrained by the Club to fall within carefully-determined windows, so as not to jeopardize Buying Order volume, and hence transaction volume. [Page 40, lines 8-22, emphasis added].

**Claim 20** refers to "...replicating on said club web site product information stored on a retailer member's computer." Replication is the process of creating and managing duplicate versions of a database.<sup>1</sup> There is no mention of replication in the specification, although applicant mentions uploading of data by a retailer, Fig. 16 and related description. Claim 20 will be interpreted to refer to uploading.

**Claim 21** refers to "... charging and collecting a fee from retailer members for said product information replication." The description mention several types of fees, including monthly membership fees, delivery fees, brokering fee. There is no mention of replication and no mention of a fee for replication: The closest description appears to be:

In the present embodiment, once a retailer has become a Retailer Member of the Club, further competition-based incentives are offered to Retailer Members by virtue of providing a platform for advertising, offering of coupons in regard to retailer special offers, and [Ex. note: maintaining?] detailed descriptions of products offered for sale, including exact pricing, via local databasing of their inventory. The Club benefits from providing these services to retailer members through the collection of additional fees. [Page 11, lines 1-6.]

For purposes of this examination, claim 21 will be interpreted to refer to a fee for storing a retailer's information.

**Claim 26** refers to "...designating one or more buyer members "active" based on a schedule of expected purchase activity during the designation period, and requiring any such designated buyer member to fulfill and purchases [sic]



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made during its period of designation.” However, there does not appear to be elaboration of designating a period or how to measure or “schedule...expected purchase activity...” or of requiring a designated buyer member to fulfill.

Claims 8, 29, 30 and 31 refer to **wireless**:

Claim 8, 31 wireless networking infrastructure

Claim 29, 31 wireless communication means

Claim 30, 31 wireless means

It is not clear whether applicant claims patentable distinction among the various uses. For purposes of this examination, the term will be given its broadest reasonable interpretation as radio transmission via the airwaves.<sup>2</sup> Prior art will be found to read on applicant's invention where prior art discloses the use of communication via wireless transmission, such as infrared line of sight, cellular, microwave, satellite, packet radio and spread spectrum.

Appropriate correction is required.

### ***Specification***

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Nevertheless, the disclosure is objected to because of the following informalities. They appear to be word processing errors:

Page 17, line 22, “gateway , 80” should be changed to “gateway, **90**”.

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<sup>1</sup> Definition of *replication*, RANDOM HOUSE WEBSTERS Computer and Internet Dictionary.

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Page 22, line 23, "...returns the Proxy Member to the gateway login page, 80" should be changed to "...returns the Proxy Member to the gateway login page, **90**"

Appropriate correction is required.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a) because they fail to show the following items as described in the specification.

Fig. 10, item 1030 is missing. Appears to refer to the unlabelled decision block that reads "Club Cash?"

Fig. 15, circle C should be changed to **1C**.

Fig. 15 contains an extraneous line that should be shifted to the left in order to connect decision block 1557 and box 1560.

Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and

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<sup>2</sup> Definition of *wireless*, Computer Desktop Encyclopedia.

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appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Limitations of claims 1 and 31 are individually numbered for readability.

Please refer to the following table of equivalence:

<b>Applicantion</b>	<b>equivalent</b>
Club member area	Internet mall or portal area
Customer member	User, customer, consumer
Retail member	Retailer, merchant
Buyer member	Delivery or fulfillment service or deliverer
Club web site	Mall or portal site

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Treyz** et al. (US 6,587,835) in view of **Fair** (US 6628307) and further in view of

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an article in ***The Economist***, Survey: E-commerce: Distribution Dilemmas, London, 26 February 2000, vol. 354, Iss. 8159, p. S27.

**As per claim 1**, Treyz discloses

- 1.1 designating one or more geographic Internet Malls. Please see at least Col. 10, lines 4-16 and references to city or portion of cities. See also references to Internet malls and portals.
- 1.2 associating with each said Internet Mall one or more users who reside within said Internet Mall. Please see at least Fig. 3 and related text. See references to users of the mall.
- 1.3 associating with each said Internet Mall one or more delivery services that must be prepared to work within said Internet Mall. Please see at least references to delivery and fulfillment, home delivery at least Col. 2, lines 63-67, Col. 10, line 546-Col. 11, line 39.
- 1.4 associating with each said Internet Mall one or more merchants who must offer products for sale within said Internet Mall. Please see at least Fig. 15, and references to retailers and merchants.
- 1.5 providing means through an electronic communications network for said users, delivery services and merchants to access a Internet Mall specific to said Internet Mall and to interact with said Internet Mall. Please see at least Fig. 14 and related text.
- 1.6 providing means through an electronic communications network for said users, delivery services and merchants to each access an individual member web page located on said Internet Mall and personalized using parameters

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specific to each such user, delivery service and merchant. See, for example, at least Figs. 1, 2, 9 and related text. See also references to personalized shopping lists, Col. 3, lines 16-25.

1.7 providing means for said merchants to offer one or more products for sale on said Internet Mall to said users. Please see at least Col. 9, lines 56-Col. 11, line 39 for some products offered.

1.8 providing means for said users to purchase products offered for sale on said Internet Mall. Please see at least Col. 9, line 56-Col. 11, line 39.

1.9 providing means for said delivery services to be notified of purchases made by said users and to offer to said merchants to fulfill said purchases.

Please see at least references to fulfillment, Fig. 21, 25 and related text. See at least references to home delivery, Col. 2, lines 63-67, Col. 10, line 546-Col. 11, line 39.

As per claim 1, Treyz **does not** specifically disclose membership fees. Fair discloses the use of membership fees by various participants. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Treyz and Fair to disclose the use of membership fees by various participants. One of ordinary skill in the art at the time the invention was made would have been **motivated** to combine Treyz and Fair to disclose the use of membership fees by various participants for the obvious reason that membership fees may provide additional revenue to support upkeep of a Internet Mall.

As per claim 1.10, Treyz Treyz discloses the use of various delivery and fulfillment services. Treyz discloses ordering perishable items such as Pizza, fish

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and sandwiches, and having perishable items delivered to a user's home. Treyz **does not** specifically disclose fulfilling said purchases by having said delivery services buy said products from said merchants, deliver said products to said users to a location within said Internet Mall within approximately thirty (30) minutes of said purchase, and collect a payment from said users. **The Economist** discloses several types of fulfillment services, such as Kozmo, WebVan, Peapod. The Economist discloses geographic-area fulfillment with 30 minute selection windows. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Treyz and The Economist to disclose fulfilling purchases by having a delivery service buy products from merchants and deliver products to users to a location within Internet Mall area within approximately thirty (30) minutes of a purchase and collect a payment from users.

One of ordinary skill in the art at the time the invention was made would have been **motivated** to combine Treyz and The Economist to disclose fulfilling purchases by having a delivery service buy products from merchants and deliver products to users to a location within Internet Mall area within approximately thirty (30) minutes of a purchase and collect a payment from users for the obvious reason that items such as fish may spoil quickly and pizza may get cold quickly, and customers may not wish to pay for spoiled fish, or cold pizza.

**As per claim 2**, Treyz discloses providing telephonic means for said users to purchase products offered for sale at said Internet Mall. Please see at least

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Figs. 15, 16 and related text concerning wireless telephonic means. See also references to the Internet.

**As per claim 3**, Treyz **does not** specifically disclose providing software means for said users to track the progress of fulfillment of their purchases. Please see at least Figs. 21 and 25 for fulfillment. This is disclosed by The Economist.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Treyz and The Economist to disclose providing software means for said users to track the progress of fulfillment of their purchases. One of ordinary skill in the art at the time the invention was made would have been **motivated** to combine Treyz and The Economist to disclose providing software means for said users to track the progress of fulfillment of their purchases for the obvious reason that customers may desire to check for any delays in an order, perhaps during a party.

**As per claim 4**, Treyz discloses providing software means for said users, merchants and delivery services to compose and post in said Internet Mall comments regarding any element of said Internet Mall. Please see at least Fig. 27 and related text.

**As per claim 5**, Treyz **does not** specifically disclose maintaining on said *Mall web page* a schedule of acceptable fees that may be charged by merchants and delivery services to users and by merchants to said delivery services. Treyz discloses storing acceptable product fees, and the use of fulfillment services.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to disclose maintaining on a *Mall web page* a schedule of acceptable fees that may be charged by merchants and delivery services to users and by merchants to delivery services. One of ordinary skill in the art at the time the invention was made would have been ***motivated*** to disclose maintaining on a *Mall web page* a schedule of acceptable fees that may be charged by merchants and delivery services to users and by merchants to delivery services for the obvious reason that customers may wish to know in advance what the total cost of getting a product at home, rather than be surprised by undisclosed additional fees.

**As per claim 6**, Treyz ***does not*** specifically disclose that membership fees are paid to said Mall via secure funds transfer over the World Wide Web from debit facilities pre-determined with each of said user, delivery service and merchant. Treyz discloses payment of financial commitments via the WWW. Fund transfers over the WWW are often carried out via debit and credit facilities over secure transfer facilities and that such use is notoriously well known.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include secure funds transfer over WWW from debit facilities predetermined with each user, delivery service and merchant. One of ordinary skill in the art at the time the invention was made would have been ***motivated*** to include secure funds transfer over WWW from debit facilities predetermined with each user, delivery service and merchant for the obvious reason that such facilities provide all parties with a reliable and trustworthy



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means of ensuring payment for goods. See also references to Intertrust in The Economist.

**As per claim 7**, Treyz discloses determining the geographic location of said Internet Malls based on the likelihood of enrolling a sufficient number of consumer, delivery services based upon demographics and statistics. Please see at least Fig. 16 and related text. See also at least Col. 12, line 56-Col. 13, line 9.

**As per claim 8**, Treyz discloses determining the geographic location of said Internet Malls based on the availability of suitable wireless networking infrastructure in the candidate geographic areas. Please see at least Fig. 16 and related text concerning suitable wireless networking.

**As per claim 9**, Treyz **does not** specifically disclose determining the geographic location of said Internet Malls based on the number and nature of potential merchants likely to allow competition-based incentives to drive merchant subscription within candidate geographic areas. It is well known that businesses often wish to maximize profits.

It would have been obvious to one of ordinary skill in the art to extend Treyz to disclose determining the geographic location of an Internet Mall based on the number and nature of potential merchants likely to allow competition-based incentives to drive merchant subscription within candidate geographic areas. One of ordinary skill in the art would have been **motivated** to extend Treyz to disclose determining the geographic location of an Internet Mall based on the number and nature of potential merchants likely to allow competition-based incentives to drive merchant subscription within candidate geographic

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areas for the obvious reason that by doing so, the various participants of the mall may increase their profits.

**As per claim 10**, Treyz discloses determining the geographic location of said Internet Malls based on the availability of a suitable site for rental or construction of a warehouse structure centrally located within candidate geographic areas. Please see at least Col. 29, lines 11-34 for references to warehouses.

**As per claim 11**, Treyz discloses determining the geographic location of said Internet Malls based on geographic location. Please see at least references to portion of city, Fig. 85 and related text. See also Col. 24, lines 4-17. Treyz **does not** specifically disclose refining its geometric shape to approximate a circle, by the use of extended ZIP codes falling within a pre-determined radius of the center of a candidate geographic area. The maximum distance between the center and the outermost point on the curve is the radius. This distance may also approximate a maximum delay involved in delivering a product to a customer.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Treyz and knowledge available to disclose determining the geographic location of a portal area based on refining its geometric shape to approximate a circle, by the use of extended ZIP codes falling within a pre-determined radius of the center of a candidate geographic area. One of ordinary skill in the art at the time the invention was made would have been **motivated** to combine Treyz and knowledge available to disclose

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determining the geographic location of a portal area based on refining its geometric shape to approximate a circle, by the use of extended ZIP codes falling within a pre-determined radius of the center of a candidate geographic area for the obvious reason that by doing so, a mall may maximize efficient delivery of products to a geographic area.

**As per claim 12**, Treyz **does not** specifically disclose determining the geographic bounds of said Internet Malls based on adequate transportation infrastructure to improve the likelihood of delivery services having the ability to deliver purchases within approximately thirty (30) minutes to any point within a candidate geographic area. Please see rejection of claim 1, and discussion of a need for quick delivery of perishable items such as fish, pizzas and other products.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Treyz and knowledge generally available to determine geographic bounds of Internet Malls based on adequate transportation infrastructure to improve the likelihood of delivery services having the ability to deliver purchases within approximately thirty (30) minutes to any point within a candidate geographic area.

One of ordinary skill in the art at the time the invention was made would have been **motivated** to combine Treyz and knowledge generally available to determine geographic bounds of Internet Malls based on adequate transportation infrastructure to improve the likelihood of delivery services having the ability to deliver purchases within approximately thirty (30) minutes to any point within a

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candidate geographic area for the obvious reason that items such as fish may spoil quickly and pizza may get cold quickly, and customers may not wish to pay for spoiled fish, or cold pizza.

**As per claims 13-14**, Treyz *does not* specifically disclose identifying and inducing potential consumer, buyer and merchants through active recruitment programs and requiring potential consumer, buyer and merchants to complete an electronic form located in the Internet Mall and to utilize the data entered into the electronic form to screen potential consumer, buyer and merchants prior to their becoming associated with the *Mall*. Please note that various limitations of claims 13-14 are not an active part of the method steps and carry little or no patentable weight.

Therefore, it would have been obvious to one of ordinary skill in the art to extend Treyz to include recruitment and registration for members. One of ordinary skill in the art would have been ***motivated*** to extend Treyz to include recruitment and registration for members for the obvious reason of using such information to devise more user-friendly sites, perhaps increasing a site's activity, generating more revenue and profits.

**As per claim 15**, Treyz discloses providing secure means for a person designated by said Mall to assist users in making purchases telephonically and to initiate said purchases on behalf of said users. Please see at least item 414, sales assistance via telephonic means.

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**As per claim 16**, Treyz discloses providing incentives to consumer, buyer and merchants. Please see at least Fig. 83 and related text. See also at least Col. 50, lines 19-37.

**As per claim 17 and 18**, Treyz discloses the use of incentives of various types. Please note that various limitations of claims 17-18 are not an active part of the method steps and carry little or no patentable weight:

**“... that incentives to merchants are based on competition between potential or existing merchants.” claim 17**

**“...that incentives are purchase credits awarded to users who sponsor qualified persons who become members of said Mall...” claim 18.**

Therefore, it would have been obvious to one of ordinary skill in the art to extend Treyz to disclose “... that incentives to merchants are based on competition between potential or existing merchants.” claim 17, “...that incentives are purchase credits awarded to users who sponsor qualified persons who become members of said Mall...” claim 18.

One of ordinary skill in the art would have been **motivated** to extend Treyz to disclose “... that incentives to merchants are based on competition between potential or existing merchants.” claim 17, “...that incentives are purchase credits awarded to users who sponsor qualified persons who become members of said Mall...” claim 18 for the obvious reason that such incentives may increase economic activity for the various parties, thereby possibly increasing profits for merchants, and lower prices for customers.

**As per claim 19**, Treyz discloses the use of incentives of various types. However, Treyz **does not** specifically disclose that incentives to deliverers may

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include services designed to allow said deliverers to become independent business persons. The Economist discloses the use of independent business persons (contractor).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Treyz and The Economist to disclose that incentives to deliverers may include services designed to allow said deliverers to become independent business persons.

One of ordinary skill in the art at the time the invention was made would have been ***motivated*** to combine Treyz and The Economist to disclose that incentives to deliverers may include services designed to allow said deliverers to become independent business persons for the obvious reason that a contractor working for many web merchants may not be able to given them all priority. BY providing incentives to contractors, for example, a contractor may affiliate himself more closely with a particular web merchant.

**As per claim 20**, Treyz discloses storing, on Mall databases, product information stored on a merchant's computer. See, for example, at least Col. 21, lines 1-24.

**As per claim 21**, Treyz ***does not*** specifically disclose charging and collecting a fee from merchants for said product information storage. Treyz discloses service providers. Service providers often provide services such as storage in exchange for money.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Treyz and general knowledge to disclose charging

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and collecting storage fees. One of ordinary skill in the art at the time the invention was made would have been ***motivated*** to combine Treyz and general knowledge to disclose charging and collecting storage fees for the obvious reason that businesses such as service providers and online malls often wish to maximize profits, and such fees may provide additional income.

**As per claim 22**, Treyz discloses placing advertisements on said Internet Mall, specific to products of one or more merchants, and collecting a fee from said merchants for said advertisements. Please see at least Fig. 27 and related text. See also at least Col. 3, lines 16-25.

**As per claim 23**, Treyz discloses providing software means for said users to search for products by designating specific merchants within the same Internet Mall whose products they wish to limit their search to and displaying only products available from the selected merchants. Please see at least Fig. 47, searching by store.

**As per claim 24**, Treyz discloses providing software means for said users to search for products available from said merchants in the same Internet Mall by selecting a product category. Please see at least Fig. 31 and related text.

**As per claim 25**, Treyz discloses providing software means for said users to search for products by first preparing a shopping list and then displaying to said user products that match the list which are available from merchants in the same Internet Mall. Please see at least Figs. 21, 23 and related text. See also references to shopping lists, at least Col. 3, lines 15-26. See also Col. 11, lines 12-34.

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**As per claims 26-28.** Treyz discloses delivery and fulfillment services.

The Economist discloses the UPS delivery that allows customer to check exactly where their order is at any time of the day or night.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Treyz and the Economist to disclose usage of UPS-type tracking to designate active delivery services, selecting a single deliverer and use various formulas to consider various factors in delivering an order.

One of ordinary skill in the art at the time the invention was made would have been *motivated* to combine Treyz and the Economist to disclose usage of UPS-type tracking to designate active delivery services, selecting a single deliverer and use various formulas to consider various factors in delivering an order for the obvious reason of maximizing utility of resources and cut down delivery time.

Please note that various limitations of claims 26-28 do not play an active part in the method steps and carry little or no patentable weight:

“... based on a schedule of expected purchase activity during the designation period, and requiring any such designated delivery service to fulfill and purchases made during its period of designation...” claim 26

“...automatically selecting by use of a formula a single "active" delivery service to fulfill an order when multiple "active" members have been designated...” claim 27 and

“...factors that considered in said formula include the preferences of said consumer and merchants involved in the subject order; the ability of the delivery service to transport the purchased product; the location of said delivery service in relation to the locations of said consumer and merchants involved in the subject order and; the ability or willingness of said delivery service to fulfill the subject order....”



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**As per claim 29**, Treyz discloses notifying delivery services of purchases made by said users through wireless communication means. See, for example, at least Col.1 2, line 56-Col. 13, line 9.

**As per claim 30**, Treyz discloses GPS. See, for example, at least Fig. 18 and related text. Treyz discloses the use of tracking and handheld devices.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Treyz to disclose the use of a Geographic Information System ("GIS") incorporating real-time Global Positioning System ("GPS") data provided through wireless means by delivery services to enables users to track the exact location of ordered products. One of ordinary skill in the art at the time the invention was made would have been ***motivated*** to extend Treyz to disclose the use of a Geographic Information System ("GIS") incorporating real-time Global Positioning System ("GPS") data provided through wireless means by delivery services to enables users to track the exact location of ordered products for the obvious reason that customers may desire to check for any delays in an order, perhaps during a party. See also rejection of claim 3.

**Claim 31** is rejected under 35 U.S.C. 103(a) as being unpatentable over ***Treyz*** in view of ***Fair*** (US 6628307) and further in view ***The Economist***.

See rejection of claims 1-30, above.

### ***Response to Arguments***

Applicant's arguments concerning claims 1, 31, 23, 24 are found to be persuasive and the rejections are withdrawn.

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Concerning claim 25, the Examiner acknowledges applicant's functional equivalent of "shopping list" to a "...list of keywords..." However, there appears to be no mention of a "list of keywords", or use of the term "keyword" in the context of a "list." For purposes of this examination, the term "shopping list" will be given its broadest reasonable interpretation to read on a shopping list and on entry of one or more words entered in a field for text searches, This interpretation appears to be consistent with the description found on page 24, line 18-page 25, line 31.

### ***Allowable Subject Matter***

Claim 31 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, claim objections, drawings corrections set forth in this Office action.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H Zurita whose telephone number is 703-605-4966. The examiner can normally be reached on 8a-5pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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